BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

FERNANDO LOPEZ)
Claimant	
VS.	
	Docket No. 1,001,667
LABOR SOURCE)
Respondent)
AND	
)
CONTINENTAL WESTERN INSURANCE COMPANY))
Insurance Carrier))

ORDER

Claimant appeals from a December 5, 2003 Award entered by Administrative Law Judge (ALJ) Steven J. Howard. The Appeals Board (Board) heard oral argument on April 6, 2004.

APPEARANCES

C. Albert Herdoiza of Kansas City, Kansas, appeared on behalf of claimant. Steven J. Quinn of Kansas City, Missouri, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

Issues

The ALJ found claimant was a part time hourly employee under K.S.A. 44-511(a)(4). Claimant contends he was instead a full time hourly employee under K.S.A. 44-511(a)(5). Claimant's average weekly wage is the only issue for the Board's review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Board concludes the Award should be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in the Award. Claimant may have believed that he was being hired for a full time position as a "temp to hire," but that is not what the record shows. The evidence proves claimant was hired as a day laborer and not as a "temp to hire" worker. Accordingly, claimant was not a full time employee. The Board affirms the finding that claimant was a part time hourly employee.

Award

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Steven J. Howard dated December 5, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.		
Dated this day of	April 2004.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: C. Albert Herdoiza, Attorney for Claimant Steven J. Quinn, Attorney for Respondent Steven J. Howard, Administrative Law Judge Paula Greathouse, Workers Compensation Director